

REMARKS

Claims 1-50 are pending in this application, with claims 1-23 and 28-46 withdrawn. Claim 24 has been amended to provide antecedent basis for elements found in the dependent claims. No new matter has been added.

The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants reserve the right to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

Restriction Requirement

The Examiner made final the restriction requirement dated August 29, 2006. Applicants disagree and ask for reconsideration from the Examiner regarding the status of Group IV only. In addition, the Applicants reserve the right to petition the Director for review of whether this restriction was improper.

Initially, the Applicants request clarification on the status of claims 24 and 47-50. Applicants assert that these are generic claims for all of the claims in Group IV. See e.g. MPEP §809.02(a). And thus if these claims are allowable, then the

remainder of the claims in the group would be subject to rejoinder of the species claims. See e.g. MPEP §809 and §821.04(a).

In addition, the Applicants assert that Group IV was improperly divided into species and requests that all the claims in Group IV (claims 24-50) be examined.

The Examiner argues that he has made a *prima facie* case that the species are independent and distinct in the original restriction requirement. However, in paragraph 5 of that paper, the Examiner provides only a conclusory statement that the species are independent and distinct followed by a listing of the claim elements thought to be independent and distinct. A conclusory statement alone is not sufficient for a *prima facie* case.

As initial matter, the species are not independent from the other species in the genus as 'independent' is used in this context. MPEP §802.01 defines independent as meaning "that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, and effect". Obviously, there is a disclosed relationship between the species of a genus. Thus, Examiner cannot show that the species are independent of each other.

The only question remaining is whether the species are distinct from each other. There are two requirements for inventions to be distinct. The inventions as claimed are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process). Further, at least one invention is patentable (novel and nonobvious) over the other. In the original restriction requirement, the Examiner did not show how the species are distinct from one another, but merely relied on a conclusory statement that the species were distinct.

In this office action, the Examiner stated that the species were distinct because they were mutually exclusive from one another. The Examiner cites to MPEP §806.04(f), which is quoted from the Eighth Edition, August 2006 Revision below:

Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first. This may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in scope.

The touchstone of this type of restriction requirement is that the species must not overlap. Using this analytical approach, the restriction requirement fails because there can be and is overlap amongst all of the species.

For example, as discussed in the previous response, Group IV-A relate to the use of thermoelectric devices (TEDs), while Group IV-B and Group IV-C also include the use of thermoelectric devices. For this reason alone, Groups IV-A, IV-B and IV-C overlap with each other and thus are not mutually exclusive.

Furthermore, the Applicants stated in their specification that elements shown with regard to only one embodiment were not so limited in scope. Rather, the elements could be combined with all of the other embodiments in the specification. See paragraph [0087].

Moreover, the Examiner has not met his initial burden by showing, with appropriate explanation, the species fall into any of the following categories:

- (A) Separate classification of the species;
- (B) A separate status in the art when the species are classifiable together; or
- (C) A different field of search.

For all of these reasons, the Applicants assert the restriction of Group IV into individual species is improper and request that all of the claims of the Group IV be examined together. Furthermore, Applicant request clarification on whether claims 24 and 47-50 are generic. Applicants reserve the right to rejoin claims as appropriate or to petition this restriction requirement.

Information Disclosure Statement

The Examiner noted problems with some of the references listed on IDSs submitted on March 15, 2006 and December 2, 2004. The following references marked as not considered are in fact duplicates that were otherwise considered by the Examiner.

- EP0936105
- EP0517615
- DE19954978
- JP5277020
- WO9900268
- EP1075984
- GMT 830 Heating & Ventilation System, IBG Automotive LTD.
- Automotive Heated Seats – Heated Steering Wheels, IGB Automotive Ltd.

For one reference, there is an error in the number US6,291,8031. It should be US6,291,803 and this reference was otherwise considered by the Examiner. Reference CA1266925 was mistakenly listed. Copies of the following reference are now provided as is a new listing and a new IDS:

- DE19810936 09/16/1999 DaimlerChrysler AG
- WO05/042301 05/12/2005 Minuth et al.
- WO02/06914 01/24/2002 Kongsberg Automotive AB

Applicants respectfully request that the Examiner consider these references.

Rejection under 35 U.S.C. §102 (b)

The Examiner rejected claims 24-27 and 47-50 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,450,894 to Inoue et al. ("Inoue"). The Applicants respectfully disagree.

Contrary to the assertion of the Examiner, Inoue does not disclose each element of the claims. In particular, Inoue does not disclose drawing air through a surface of the seat. The Examiner identifies item 60 in Fig. 1 as providing that functionality. However, a reading of Inoue shows that suction port or inlet 60 is outside of the location where the occupant rests on the seat and thus cannot provide drawing air through a surface of the seat:

The branch ducts 63 are branched from respective ends of the bottom duct 62, and have at the respective free or outer end, suction ports 60 which draws in air after it has been subjected to the air conditioning in chamber 126. As will be easily seen from FIG. 4(B), each suction inlet 60 forms an elongated rectangular shape that is long in the longitudinal axis of the vehicle, while the width thereof in the transverse direction of the vehicle is small, which can prevent the suction inlets 60 from becoming an obstacle when the passenger takes a seat. (7:41-47)(Emphasis added).

Fig. 4(B) shows the suction inlet 60 spaced apart from but attached the seat 50 (made up of cushion material 53) by brackets 86. Thus, the suction inlet is to the side of the seat. The placement of the suction inlet is consistent throughout the disclosure; it is always to the side of the seat. See e.g. Fig. 13 and 12:31-34. While another possible arrangement of the suction inlet is depicted in the figures e.g. Fig. 108, the specification makes clear that Inoue intended this to be a short hand for what was shown in Fig. 1:

In FIG. 108, the seats are provided with respective air conditioning units, the construction of each of which is substantially the same as explained with reference to FIG. 1. Therefore, a detailed explanation of the units will be omitted by using the same numbers for parts performing the same functions (42:56-62).

As can be seen, Inoue does not disclose drawing air through the surface of the vehicle seat. Consequently, Inoue does not disclose each element of the claims. Applicants respectfully request that this rejection be withdrawn.

CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (319) 594-2200.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-1097 for any fee which may be due.

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